

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JAY MOODY,

Plaintiff,

-against-

THE CITY OF NEW YORK and THE NEW YORK
CITY POLICE DEPARTMENT,

Defendant,
-----X

Filed On:

Index No.:

Plaintiff designates:

New York County as the place
trial.

SUMMONS

Basis of venue: Place of
occurrence

The incident occurred at:
100 Centre Street
New York, New York

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not entered with this summons, to serve a notice of appearance, on the plaintiff's attorney, within twenty (20) days after the service of this summons, Exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York), and in case of your Failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Brooklyn, New York
May 16, 2014

DAVID J. HERNANDEZ & ASSOCIATES,



By: Harper A. Smith, Esq.

Attorneys for Plaintiff(s)

JAY MOODY

26 Court Street, Suite 2707

Brooklyn, New York 11242

718-522-0009

Defendants Address:

THE CITY OF NEW YORK and
THE NEW YORK CITY POLICE
DEPARTMENT
100 Church Street
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JAY MOODY,

Plaintiff(s)

INDEX NO.:

-against-

VERIFIED COMPLAINT

THE CITY OF NEW YORK and THE NEW YORK CITY
POLICE DEPARTMENT,
-----X

Plaintiff, JAY MOODY by his attorneys DAVID J. HERNANDEZ & ASSOCIATES,
complaining of the defendants, upon information and belief alleges as follows:

1. That at all times hereinafter mentioned, plaintiff, JAY MOODY, was and still is a resident of the County of Bronx, City and State of New York.
2. That at all times hereinafter mentioned, defendant, THE CITY OF NEW YORK, (hereinafter referred to as "THE CITY") was and still is a municipal corporation duly organized and existing under the virtue of the laws of the State of New York.
3. That at all times hereinafter mentioned, defendant, THE NEW YORK CITY POLICE DEPARTMENT (hereinafter referred to as "NYPD") was and still is an agency, instrumentality, department and/or governmental corporation under the direction and control of the defendant, THE CITY.
4. That at all times hereinafter mentioned, defendant NYPD was acting within the scope of its agency relationship with the CITY.
5. That within ninety (90) days after plaintiff's claim arose, a Notice of Claim was served on the Defendants, THE CITY OF NEW YORK and NYPD, in accordance with General Municipal Law 50(e). (Annexed hereto as Exhibit "1" is a copy of the Notice of Claim).

6. That on October 28, 2013, a 50-h hearing was conducted by defendant THE CITY pursuant to General Municipal Law 50(h).
7. That the Comptroller of the City of New York has wholly neglected and refused to make an adjustment or payment of claim for more than thirty days after its presentation.
8. That this action was commenced within one year and ninety days after the cause of action accrued.

AS AND FOR A FIRST CAUSE OF ACTION—NEGLIGENCE

9. On or about May 16, 2014, plaintiff was arrested and handcuffed by officers of the NYPD at the “28th Street” subway station in the County, City, and State of New York.
10. Immediately following the aforesaid arrest, defendant NYPD, through its agents, servants, and/or employees, held plaintiff, still handcuffed, in police custody at the police station inside the “14th Street—Union Square” subway station in the County, City and State of New York.
11. From the “14th Street—Union Square” station, defendant NYPD, through its agents, servants, and/or employees, transported the plaintiff, who remained handcuffed, to a police precinct and then to Central Booking, located at 100 Centre Street in the County, City and State of New York.
12. At Central Booking, plaintiff remained handcuffed overnight and was not released from handcuffs until the next day, May 17, 2013.
13. From the time plaintiff was handcuffed on May 16, 2013, continuously through the time he was released from handcuffs on May 17, 2013, plaintiff was in the custody of the NYPD and was under the care and control of the NYPD, through its agents, servants, and/or employees.

14. That on May 16, 2013 – May 17, 2013, plaintiff remained handcuffed by the NYPD, through its agents, servants, and/or employees, for an unreasonably long time, without proper justification of cause.
15. That defendant NYPD, through its agents, servants, and/or employees, failed to provide proper care and attention to the plaintiff while plaintiff was in their custody.
16. As a result of the foregoing, plaintiff sustained severe bodily injuries and pain and suffering, was confined to hospital, bed and home for long periods of time, was incapacitated from his usual activities, was compelled to expend large sums of money for medical treatment, and sustained other economic loss.

AS AND FOR A SECOND CAUSE OF ACTION—EXCESSIVE FORCE

17. Plaintiff repeats, realleges, and reiterates each and every allegation numbered “1” through “16” as if fully set forth herein.
18. The force used by NYPD, through its agents, servants, and/or employees in keeping the handcuffs on the plaintiff for an extended period of time was unnecessary and unjustified.
19. Such actions by the NYPD, through its agents, servants, and/or employees constitute excessive force against the plaintiff.

AS AND FOR A THIRD CAUSE OF ACTION—FALSE ARREST

20. Plaintiff repeats, realleges, and reiterates each and every allegation numbered “1” through “19” as if fully set forth herein.
21. On May 17, 2013, plaintiff appeared before a judge at 100 Centre Street, in the County, City and State of New York for arraignment on the charges for which he had been arrested on May 16, 2013.

22. After the arraignment on May 17, 2013, as plaintiff was exiting the courthouse at 100 Centre Street, the NYPD, through its agents, servants, and/or employees, re-arrested plaintiff on new charges.
23. The new charges against the plaintiff were alleged to stem from an outstanding warrant in the County of Bronx, City and State of New York.
24. In fact, the warrant in the Bronx had previously been vacated, and there was no outstanding warrant against the plaintiff in effect at the time of plaintiff's arrest on May 17, 2013.
25. The NYPD had no reasonable basis or probable cause to arrest the plaintiff on May 17, 2013, and said arrest was unlawful.
26. The defendants knew or knew or should have known through the exercise of reasonable diligence and proper police procedure, that there was no probable cause to arrest plaintiff on May 17, 2013, and that the warrant which was alleged to be outstanding had in fact been vacated.
27. After the arrest on May 17, 2013, defendant NYPD, through its agents, servants, and/or employees, transported the plaintiff to Central Booking in the Bronx, located at 215 East 161st Street, County of Bronx, City and State of New York.
28. After plaintiff was brought to Central Booking in the Bronx, he was released after the Bronx District Attorney's Office declined to prosecute him.
29. The defendants THE CITY and NYPD, through their agents, servants and/or employees, willfully, negligently and wrongfully accused the plaintiff of having committed acts in violation of the Penal Law of the State of New York.
30. The defendants THE CITY and NYPD, its agents, servants and/or employees, including defendants the agents, servants, and/or employees of defendants CITY and NYPD who at

that time were police officers, willfully, negligently and wrongfully arrested Plaintiff for alleged violations of the Penal Law of the State of New York, even though the defendants knew or should have known that there was no probable cause for the arrest.

31. As a result of the aforesaid false and unlawful arrest, the Plaintiff was caused to suffer loss of liberty, emotional and psychological distress, anguish, anxiety, fear, humiliation, damage to reputation, and economic loss, legal expenses and damage to his reputation.

AS AND FOR A FOURTH CAUSE OF ACTION—NEGLIGENT HIRING

32. Plaintiff, JAY MOODY, repeats and reiterates the allegations contained in paragraphs “1” through “31” as if they were more fully set forth at length herein.
33. All of the foregoing occurred due to the negligence of defendants THE CITY and NYPD in hiring, training, and retention of employees of the NYPD, including the hiring, training, and retention those individuals involved in holding plaintiff in handcuffs for an unreasonable period of time and those individuals involved in the arrest of plaintiff on May 17, 2013.

**AS AND FOR A FIFTH CAUSE OF ACTION—
VIOLATION OF CIVIL RIGHTS**


34. Plaintiff, JAY MOODY, repeats and reiterates the allegations contained in paragraphs “1” through “33” as if they were more fully set forth at length herein.
35. The actions of defendants heretofore described deprived plaintiff of his rights, privileges and immunities as granted under the United States Constitution, Amendments One, Four, Five and Fourteen, The New York State Constitution, the Civil Rights Act, and 42 U.S.C. §1981, 1983, 1985, 1986 and 1988 and the complained of conduct was either the result of an official policy or unofficial custom, including but not limited to, the policies and customs concerning the hiring, training, supervision, retention and discipline of THE CITY and NYPD’s agents, servants and/or employees.

36. That the defendants established a custom, policy and/or practice of encouraging, approving and/or tolerating the use by the NYPD of unreasonable searches and seizures, excessive force and acts of misconduct against civilians and subsequent attempts to conceal such actions by failing to adequately train, supervise and discipline its agents, employees and officers.
37. The defendants have deprived plaintiff of his liberty in violation of his Civil and Constitutional rights as set forth in the United States Constitution, 42 U.S.C. § 1983 and Constitution of the State of New York.
38. The defendants conspired with each other and acted in concert to discriminate against and deprive the plaintiff of his Constitutional and Civil rights.
39. That the defendants established a custom, policy and/or tolerating the use by the NYPD of unreasonable searches and seizures, and acts of misconduct against civilians and subsequent attempts to conceal such actions by failing to adequately train, supervise and discipline its agents, employees and officers.
40. That the defendants were deliberately indifferent to the use of improper procedures in the detention and arrest of civilians and established a custom or policy and/or practice of encouraging, approving and/or tolerating the use of said improper procedures by the NYPD by failing to adequately train, supervise and discipline their agents, servants and/or officers.
41. That the defendants have deprived plaintiff of his liberty in violation of his Civil and Constitution, 42 U.S.C. §1983 and Constitution of the State of New York.
42. That the defendants conspired with each other and acted in concert to discriminate against and deprive the plaintiff of his Constitutional and Civil Rights.

43. That the supervisors and policy-making officers, defendants, THE CITY and NYPD and defendants, who aided in the unlawful arrest of the plaintiff on May 17, 2013 as a matter of policy are deliberately indifferent to said practices and have failed to take steps to terminate the herein above detailed practices and have failed to discipline or otherwise supervise the individuals engaged in such practices.
44. The defendants THE CITY and NYPD have sanctioned the policy and practices heretofore described through their deliberate indifference to the effects of such policy and practices upon the constitutional rights of the plaintiff and others similarly situated.
45. The defendant's motivations were in contravention of the United States Constitution and the Constitution of the State of New York.
46. That the unlawful conduct of the defendants, their agents, servants and/or employees and each of them, deprived plaintiff of the following rights, privileges and immunities secured to him by the Constitution of the United States and of the State of New York: (a) the right of plaintiff to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States; and (b) the right of plaintiff to not be deprived of life, liberty or property without due process of law; and (c) the right of plaintiff to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.
47. By reason of the foregoing, the plaintiff has been damaged and suffered serious and severe permanent physical injuries, emotional distress and emotional harm as a result of these deprivations of constitutional and civil rights.
48. As a result of all of the foregoing, the defendants have become liable to the plaintiff in a sum of money which exceeds the jurisdictional limitations of all lower courts.

WHEREFORE, plaintiff demands judgment as against defendants, THE CITY OF NEW YORK and THE NEW YORK POLICE DEPARTMENT in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction together with costs and disbursements of this action.

Dated: Brooklyn, New York
May 16, 2014



DAVID J. HERNANDEZ & ASSOCIATES,
By: Harper A. Smith, Esq.
Attorneys for Plaintiff
JAY MOODY
26 Court Street, Suite 2707
Brooklyn, New York 11242
718-522-0009

TO:

THE CITY OF NEW YORK and
THE NEW YORK CITY POLICE
DEPARTMENT
100 Church Street,
New York, New York 10007

ATTORNEY VERIFICATION

STATE OF NEW YORK:

SS:


COUNTY OF KINGS

HARPER A. SMITH, ESQ., an attorney admitted to practice in the Courts of New York State, affirm under penalty of perjury that I am one of the attorneys for the plaintiff in the within action, I have read the foregoing VERIFIED COMPLAINT and know the contents thereof; the allegations contained therein are true to the best of my knowledge upon information and belief.

The reason this verification is made by me and not by my client is that my client does not reside in the County where I maintain my offices.

The grounds of my belief as to all matters not stated upon my own knowledge are the materials in my file and the investigation conducted by my office.

Dated: Brooklyn, New York
May 16, 2014



Harper A. Smith, Esq.

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SUPREME COURT OF THE STATE OF NEW YORK
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-against-

THE CITY OF NEW YORK and THE NEW YORK CITY
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Defendant.

SUMMONS & VERIFIED COMPLAINT

DAVID J. HERNANDEZ & ASSOCIATES,
Attorneys for Plaintiff
JAY MOODY
26 Court Street, Suite 2707
Brooklyn, New York 11242

I, Harper A. Smith, Esq., certify that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, certify that the presentation of the foregoing paper or the contentions therein are not frivolous as defined in subsection (c) of Section 130.01 of the Rules of the Chief Administrator of the Courts.

Dated: Brooklyn, New York
May 16, 2014



Harper A. Smith, Esq.